

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,

v.

JOEL LYNN NOLEN; SHIRLEE NOLEN; NOLEN PROPERTIES, LLC; NANCY CANALE, as trustee of the Bernard Canale and Nancy Canale 1998 Revocable Trust; and BERNARD CANALE, by and through his successor in interest NANCY CANALE,

Defendants.

No. 2:23-cv-00320-JAM-CKD

ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF UNITED STATES OF AMERICA'S MOTION FOR PARTIAL SUMMARY JUDGMENT

Before the Court is the United States' ("the Government") motion for partial summary judgment. See Gov't Mot., ECF No. 85. Defendants Joel and Shirlee Nolen and Defendant Nolen Properties, LLC (collectively, the "Defendants") filed oppositions to the Government's motion and the Government subsequently replied. See Nolen Opp'n, ECF No. 93; Nolen Properties Opp'n, ECF No. 95; Gov't Reply, ECF No. 96. For the following reasons, the Court GRANTS in part and DENIES in part the Government's motion for partial summary judgment.

I. FACTUAL BACKGROUND

This case arises from alleged civil rights violations under the Fair Housing Act, 42 U.S.C. Section 3601 et seq. ("FHA").

1 The Government asserts in its Amended Complaint that Defendant
2 Joel Nolen engaged in a pattern or practice of discrimination on
3 the basis of sex committed through various acts of retaliation
4 and sexual harassment of tenants in violation of the FHA. See
5 Amended Compl., ECF No. 14. The Amended Complaint further
6 alleges that Defendant Shirlee Nolen, Joel Nolen's wife and a co-
7 owner of the rental properties is vicariously liable. Id.

The Government also maintains that in 2009, the Nolens established Nolen Properties, LLC ("the LLC") as a holding company for their properties. See Gov't Mot. at 1, ECF No. 85. Nolen Properties held title to 38 of the Nolens' rental properties from 2009 to 2013. Id. In 2013, the Nolens transferred their properties back into their own names and in 2015, Nolen Properties, LLC was dissolved. Id. On these facts, the Government has moved for partial summary judgment seeking to establish that Shirlee Nolen is vicariously liable for Joel Nolen's not yet proven violations of the FHA, that Shirlee Nolen is liable for punitive damages, and that the Court should pierce the corporate veil of Nolen Properties, LLC to hold Joel and Shirlee Nolen personally liable for the alleged misconduct.

II. OPINION

A. Legal Standard

The purpose of summary judgment is to identify and dispose of factually unsupported claims and defenses. See Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Summary judgment is therefore appropriate when the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of

1 material fact and that the moving party is entitled to judgment
2 as a matter of law." Fed. R. Civ. P. 56(c).

3 "[C]ourts are required to view the facts and draw reasonable
4 inferences 'in the light most favorable to the party opposing the
5 [summary judgment] motion.'" Scott v. Harris, 550 U.S. 372, 378
6 (2007) (quoting United States v. Diebold, Inc., 369 U.S. 654, 655
7 (1962) (per curiam)). An issue of fact is genuine if "the
8 evidence is such that a reasonable jury could return a verdict
9 for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477
10 U.S. 242, 248 (1986)).

11 B. Analysis

12 1. Shirlee Nolen's Vicarious Liability

13 The Government seeks partial summary judgment as to Shirlee
14 Nolen's vicarious liability, arguing that Joel Nolen operated as
15 her agent at all relevant times of the purported unlawful
16 conduct. See Gov't Mot. at 3-5, ECF No. 85. Defendants argue
17 that there are insufficient facts to support a finding on
18 Shirlee Nolen's vicarious liability because Shirlee Nolen did
19 not have notice of Mr. Nolen's misconduct. See Nolen Opp'n at
20 5. The Court agrees with the Government.

21 While the Government has not moved for summary judgment on
22 its substantive underlying civil rights claims pertaining to
23 Joel Nolen's own liability, the Court finds that there are
24 sufficient undisputed facts to support a finding of vicarious
25 liability against Mrs. Nolen under current law. To determine
26 whether a principal-agent relationship exists, courts consider:
27 1) "the manifestation of consent" by the principal that the
28 agent shall act on her behalf, 2) "consent by the [agent] so to

1 act," and 3) whether the principal had "control (or the right to
2 direct or control)." Meyer v. Holley, 537 U.S. 280, 286 (2003).

3 The undisputed facts show that Shirlee Nolen gave actual or
4 implied consent for Joel Nolen to act on her behalf in the
5 operations of their rental properties by allowing Mr. Nolen to
6 oversee and manage the properties. See Statement of Undisputed
7 Material Facts ("SUMF") ¶¶ 30, 40-54. Specifically, she is
8 aware that he sets prices for the rentals, makes the final
9 decision in who becomes a tenant, communicates with maintenance
10 workers, communicates with tenants, and takes actions to evict
11 tenants. SUMF ¶¶ 9-13, 42, 51, 52. The undisputed facts also
12 demonstrate that Mrs. Nolen had legal control of the properties
13 by virtue of being a co-owner. See Gov't Mot. at 4.

14 While Defendants argue that Mrs. Nolen had a minimal role
15 in the operations of the rental properties and that she was not
16 on notice of Mr. Nolen's alleged misconduct, SUMF ¶¶ 31-39;
17 Nolen Opp'n at 5, this minimal role is sufficient to establish
18 her vicarious liability as a co-owner because the FHA does not
19 require notice of misconduct to be liable under a principal-
20 agent theory.

21 Under the FHA, a person may be held vicariously liable for
22 a discriminatory housing practice by the person's agent
23 "regardless of whether the person knew or should have known" of
24 the of the misconduct. 24 C.F.R. § 100.7(b). This regulation
25 codifies Meyer v. Holley, 537 U.S. 280 (2003), where the Supreme
Court held that the FHA "provides for vicarious liability" and
that "traditional vicarious liability rules ordinarily make
principals . . . vicariously liable for the acts of their agents

1 . . . in the scope of their authority," regardless of whether
2 the principal authorized or knew of the acts at issue. Id. at
3 285-86.

4 As the Government points out, property owners, including
5 spouses who co-own property, have been held vicariously liable
6 for the discriminatory actions of their rental agents. See,
7 e.g., Bischoff v. Brittain, 183 F. Supp. 3d 1080, 1092 (E.D.
8 Cal. 2016). Moreover, the Defendants have offered to stipulate
9 to Mrs. Nolen's vicarious liability should there be a finding
10 against Mr. Nolen. See Nolen Opp'n at 5. Thus, the Court finds
11 that viewing the facts in the light most favorable to the
12 Defendants, the Government has met its burden and grants partial
13 summary judgment as to Shirlee Nolen's vicarious liability for
14 Joel Nolen's purported misconduct.

15 2. Shirlee Nolen's Liability for Potential Punitive
16 Damages

17 While there are sufficient undisputed facts to support a
18 determination of Shirlee Nolen's vicarious liability, the Court
19 does not find that there are enough undisputed facts to
20 demonstrate Mrs. Nolen's potential liability for punitive
21 damages. As Defendants point out, punitive damages are a fact-
22 driven determination and Joel Nolen's own liability for punitive
23 damages remains unproven at this stage of the litigation. See
24 Nolen Opp'n at 7.

25 To obtain punitive damages under the FHA, a plaintiff must
26 show that a defendant's conduct was motivated by evil motive or
27 intent, or that the conduct involved reckless or callous
28 indifference to the federally protected rights of others. See

1 Fair Housing of Matin v. Combs, 285 F.3d 899, 906 (9th Cir.
2 2002). However, punitive damages determinations in the
3 principal-agent and vicarious liability contexts have not been
4 fully explicated in this circuit. The Government does not cite
5 to any authority within the Ninth Circuit where a defendant has
6 been held vicariously liable for punitive damages in the FHA
7 context. Instead, both parties acknowledge that the Ninth
8 Circuit has yet to address vicarious liability for punitive
9 damages under the FHA. See Gov't Mot. at 7; Nolen Opp'n at 6
10 (citing United States v. Salazar, No. 1:23-cv-01282-JLT-CDB,
11 2024 WL 3858714, at *12 (E.D. Cal. 2024)).

12 Here, the undisputed facts show that Mrs. Nolen had a
13 minimal role in the rental business and Defendants contend that
14 Mrs. Nolen had no reason to be aware of any alleged misconduct
15 by Mr. Nolen. See Nolen Opp'n at 7. These facts do not give
16 rise to a determination as a matter of law that Mrs. Nolen was
17 recklessly indifferent, and a reasonable jury could find that
18 punitive damages are not sufficiently proven.

19 Given the lack of controlling authority in the Ninth
20 Circuit and the fact that Mr. Nolen's liability is not yet
21 determined, the Court declines to grant summary judgment on the
22 issue of Shirlee Nolen's liability for punitive damages and
23 leaves this determination for the jury or until the substantive
24 merits of the underlying FHA violations by Mr. Nolen are
25 adjudicated.

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1 3. Joel and Shirlee Nolen's Potential Personal
2 Liability for Misconduct Related to Nolen
3 Properties, LLC Under Alter Ego Theory

4 The Government further moves for partial summary judgment
5 on its claim that Nolen Properties, LLC is the alter ego of Joel
6 and Shirlee Nolen and requests that the Court pierce the
7 corporate veil to hold the Nolens personally liable for Joel
8 Nolen's purported misconduct related to the LLC. See Mot. at
9 10-15. Defendants argue that this determination is premature
10 and dispute the Government's contentions that Nolen Properties,
11 LLC was an illegitimate company. See Nolen Opp'n at 8.
12 Specifically, Defendants maintain that the LLC's liability has
13 not yet been decided, that the LLC was adequately capitalized,
14 that LLC funds were not co-mingled, and that substantial
15 injustice and fraud have not yet been shown. Id.; Nolen
16 Properties Opp'n 7-22.

17 The Court agrees with Defendants that the request to pierce
18 the corporate veil is premature at this juncture. In its reply
19 brief, the Government cites four cases for its contention that a
20 corporate veil piercing analysis is appropriate. See Gov't
21 Reply at 5-6 (citing Harwood v. Int'l Est. Planners, 33 App'x
22 903 (9th Cir. 2002); Trinidad v. Pangelinan, 32 F. App'x 357
23 (9th Cir. 2002); In re Brugnara Properties VI, 606 B.R. 371
24 (Bankr. N.D. Cal. 2019); Laborers' Pension Fund v. Lay-com,
25 Inc., 580 F.3d 602 (7th Cir. 2009)).

26 However, these cases are neither procedurally nor
27 substantively analogous to the case before this court. In
28 Harwood, the district court below ruled against the named

1 individuals on the underlying substantive contract breach and
2 civil RICO claims in conjunction with its veil-piercing
3 analysis. 33 Fed. App'x 903, 904 (9th Cir. 2002). In Trinidad,
4 the district court below ruled on the underlying fraud and civil
5 RICO charges against the named individuals before reaching the
6 veil-piercing analysis. 32 Fed. Appx. 357, 358 (9th Cir 2002).
7 In re Brugnara dealt with a bankruptcy proceeding where the
8 underlying tax debts and nominee liens had already been attached
9 to property owned by debtors before the corporate veil was
10 pierced. 606 B.R. 371, 375 (Bankr. N.D. Cal. 2019). Finally,
11 in Laborers' Pension Fund v. Lay-Com, plaintiffs had already won
12 a default judgment establishing defendant's liability before the
13 corporate veil was pierced. 580 F.3d 602, 606 (7th Cir. 2009).

Unlike this case, in each of the cases cited by the Government, the substantive misconduct forming the basis of the complaint had already been adjudicated prior to or concomitantly with a veil-piercing analysis. Thus, given the lack of persuasive or controlling authority in a similar procedural posture, the Court declines to pre-emptively pierce the corporate veil prior to determination of liability for the LLC or before the adjudication of the underlying civil rights violations. Given this procedural barrier, the Court need not reach the merits of the corporate veil piercing analysis and reserves this issue for determination at trial. Accordingly, the Court declines to grant partial summary judgment on the Nolens' personal liability based on an alter ego theory.

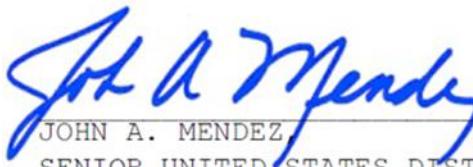
III. ORDER

For the reasons set forth above, the Court GRANTS the

1 Government's motion for partial summary judgment on Shirlee
2 Nolen's vicarious liability and DENIES the Government's motion
3 for partial summary judgment on Shirlee Nolen's prospective
4 punitive damages and Joel and Shirlee Nolen's personal liability
5 for purported misconduct related to Nolen Properties, LLC under
6 alter ego theory.

7 IT IS SO ORDERED.

8 Dated: March 11, 2025

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11 JOHN A. MENDEZ
12 SENIOR UNITED STATES DISTRICT JUDGE

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